

# Pluralism of Inheritance Law in Palampang: Analysis of Islamic Law and Customary Law in Inheritance Practices

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## Abstract

This study discusses the dynamics of legal pluralism in the practice of inheritance distribution in Palampang Village, Bulukumba Regency, which shows the complex interaction between Islamic inheritance law and the customary inheritance law of the Bugis people. The main issue raised is how the community navigates two different legal systems in inheritance practices, particularly in the context of applying the 2:1 provision between male and female heirs according to Islamic law. The discussion covers the extent to which Islamic law provisions are implemented textually, as well as how cultural values such as family deliberation, social contribution, and empathy are passed down and influence customary mechanisms in inheritance distribution. This study uses a descriptive qualitative approach with data collection methods in the form of in-depth interviews with traditional leaders, religious leaders, and heirs, as well as field observations of inheritance practices. The results of the study show that the Palampang community applies a pluralistic legal system with a greater tendency toward local customs in inheritance practices. The 2:1 distribution provision in Islamic law is rarely strictly implemented because it is considered to not fully reflect social realities and the actual contributions of each heir. An important finding from this study is that legal pluralism does not create conflict if it is managed through family deliberation mechanisms and social approaches based on local values. The academic recommendation from this study is the need for a model of integration between Islamic law and customary law that respects the cultural values of the local community without neglecting the principles of justice in Sharia, as well as strengthening the capacity of community leaders in facilitating pluralistic law-based inheritance settlements.

**Keyword: Legal Pluralism; Islamic Inheritance Law; Customary Inheritance Law.**

## Abstrak

Penelitian ini membahas dinamika pluralisme hukum dalam praktik pembagian warisan di Kelurahan Palampang, Kabupaten Bulukumba, yang memperlihatkan interaksi kompleks antara hukum waris Islam dan hukum waris adat masyarakat Bugis. Pokok permasalahan yang diangkat adalah bagaimana masyarakat menavigasi dua sistem hukum yang berbeda dalam praktik warisan, khususnya dalam konteks penerapan ketentuan 2:1 antara ahli waris laki-laki dan perempuan menurut hukum Islam. Pokok bahasan mencakup sejauh mana ketentuan hukum Islam dijalankan secara tekstual, serta bagaimana nilai-nilai budaya seperti musyawarah keluarga, kontribusi sosial, dan empati diwariskan dan mempengaruhi mekanisme adat dalam pembagian warisan. Penelitian ini menggunakan pendekatan kualitatif

deskriptif dengan metode pengumpulan data berupa wawancara mendalam terhadap tokoh adat, tokoh agama, dan ahli waris, serta observasi lapangan terhadap praktik waris yang berlangsung. Hasil penelitian menunjukkan bahwa masyarakat Palampang menerapkan sistem hukum secara plural dengan kecenderungan lebih besar pada adat lokal dalam praktik pewarisan. Ketentuan pembagian 2:1 dalam hukum Islam jarang diimplementasikan secara ketat karena dianggap kurang merefleksikan realitas sosial dan kontribusi aktual masing-masing ahli waris. Temuan penting dari studi ini adalah bahwa pluralisme hukum tidak menciptakan konflik apabila dikelola melalui mekanisme musyawarah keluarga dan pendekatan sosial berbasis nilai lokal. Rekomendasi akademik dari penelitian ini adalah perlunya model integrasi hukum Islam dan adat yang menghargai nilai budaya masyarakat lokal tanpa mengabaikan prinsip-prinsip keadilan dalam syariat, serta penguatan kapasitas tokoh masyarakat dalam memfasilitasi penyelesaian waris berbasis hukum plural.

**Kata Kunci: Pluralisme Hukum; Hukum Waris Islam; Hukum Waris Adat.**

## Introduction

Inheritance distribution is an aspect of private law that directly affects the dynamics of family relationships, justice, and social legitimacy. In Indonesia, inheritance is regulated not only by the national and religious legal systems, but also by customary norms that have been passed down through generations.<sup>1</sup> This phenomenon is evident in various regions, including Palampang Village, Bulukumba Regency, where inheritance distribution practices deviate from sharia provisions, such as giving a house to the youngest daughter without applying the 2:1 ratio between males and females. This phenomenon marks the continuation of a pluralistic legal system in Indonesian society, where Islamic law and customary law often operate side by side or even conflict in their implementation.<sup>2</sup> In the context of Islamic law, inheritance distribution is clearly regulated through the principle of *ijbari*, a mandatory distribution that cannot be changed by the will of the testator or heirs. Sons receive a larger share than daughters based on the provisions of QS. An-Nisa/4: 11.<sup>3</sup> However, this approach has received mixed responses from experts. On the one hand, Islamic scholars and legal experts view this system as a form of functional justice that takes into account men's financial burden and social responsibilities.<sup>4</sup> On the other hand, observers of family law and gender studies consider the 2:1 system not always relevant in a modern social context that has

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<sup>1</sup> Subekti Subekti and Suyono Yoyok Ucut, "Pewarisan Berdasarkan Hukum Waris Adat Terkait Sistem Kekerabatan Di Indonesia," *Jurnal Aktual Justice* 5, no. 1 (2020): 56–70, <https://doi.org/10.47329/aktualjustice.v5i1.520>.

<sup>2</sup> Istiqomah Sinaga, Nurhayati, and Hazrul Affendi Mohmad Razali, "Legal Pluralism in the Context of the Distribution of Women's Inheritance," *Mazahibuna: Jurnal Perbandingan Mazhab* 4, no. 2 (2022): 107–31, <https://doi.org/10.24252/mh.vi.29786>.

<sup>3</sup> Budi Tama Siahaan, Nurcahya, and Faisar Ananda, "Komparasi Pembagian Warisan Antara Ahli Waris Laki-Laki Dan Perempuan Di Luar Pengadilan Dalam Perspektif Hukum Islam," *Al-Qolamuna: Journal Komunikasi Dan Penyiaran Islam* 2, no. 1 (2025): 10–27, <https://doi.org/10.71242/bmgbbd22>.

<sup>4</sup> Dwi Dasa Suryantoro, "Peran Perempuan Dalam Pengambilan Keputusan Keluarga Di Era Modern: Persepektif Hukum Keluarga Islam," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 1 (2025): 38–51, <https://doi.org/10.46773/usrah.v6i1.1688>.

experienced changes in economic structure and gender roles.<sup>5</sup> Meanwhile, in customary law, such as that developed in the Bugis-Makassar people, inheritance distribution is based more on the principles of deliberation, social roles, and family harmony.<sup>6</sup> Thus, inheritance is not merely a matter of wealth distribution, but also a means of maintaining relationships between siblings and upholding local values. This approach opens up space for inheritance distribution that is not mathematically rigid, but rather more reflective of the social context. However, this approach is also vulnerable to power within the family and the neglect of women's rights in patriarchal families.

Problems arise when both legal systems coexist in society, but offer approaches that are not always compatible. In practice in Palampang, residents often symbolically respect Islamic inheritance law while simultaneously substantively implementing customary law. A tension arises between *das sein* (the reality: the dominant customary inheritance practice) and *das sollen* (the rule: normative Islamic law).<sup>7</sup> This is where the academic gap that emerged regarding how Muslim society can recognize Islamic law as legitimate theologically, but choose the customary system in practice. This tension has not been studied in depth in specific local contexts such as Palampang. This tension encompasses the concrete forms of property distribution (e.g., giving a house to the youngest daughter), the involvement of family deliberations, and the existence of conflict or harmony after the distribution.

The basic assumption is that Indonesian society, particularly in regions with strong local traditions, does not live within a single legal system. Instead, they live a pluralistic legal life, where positive law, religious law (Islam), and customary law coexist and are interconnected.<sup>8</sup> In this context, people's choice of a particular legal system, such as Islamic inheritance law or customary inheritance law, is strongly influenced by social values, family relationships, and their understanding of justice.<sup>9</sup> The two legal systems being compared are Islamic inheritance law, which regulates the distribution of inheritance for sons and daughters with a definite 2:1 ratio and is *ijbati* in nature, and customary inheritance law, which

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<sup>5</sup> Chandra Bismo Saputra et al., "Analisis Distribusi Warisan Berdasarkan Gender Dalam Hukum Islam: Telaah Atas Prinsip Keadilan Dan Ekonomi Syari'ah," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 281–90, <https://doi.org/10.61104/alz.v3i2.981>.

<sup>6</sup> Rikardo Simarmata, "Pendekatan Positivistik Dalam Studi Hukum Adat," *Jurnal Mimbar Hukum* 30, no. 3 (2018): 463–87, <https://doi.org/10.22146/jmh.37512>.

<sup>7</sup> Nurul Hidayat Syamsuddin and Fatmawati, "Warisan Janda Perspektif Hukum Islam Dan Hukum Adat," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 1, no. 3 (2020): 624–45, <https://doi.org/10.24252/shautuna.v1i3.15461>.

<sup>8</sup> Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>.

<sup>9</sup> Ratno Lukito, "Sacred and Secular Laws: A Study of Conflict and Resolution in Indonesia" (McGill University, 2006), <https://escholarship.mcgill.ca/concern/theses/6395wc69q>.

developed in Palampang Village, which tends to be more flexible, prioritizes family deliberation, and considers the social role of children in the household.<sup>10</sup> The differences in character between these two systems create a strong basis for further empirical study. As analytical variables, local cultural values such as *siri'* (self-respect), *pesse* (empathy), and *mappadeceng* (doing good) serve as mediating factors influencing the relationship between the legal system and inheritance distribution patterns.<sup>11</sup> In Bugis-Makassar people, such as in Palampang, these values are often the primary considerations in family deliberations, even surpassing the power of textual rules in Islamic law.

Previous research on the pluralism of inheritance law in Indonesia shows that inheritance practices are inextricably linked to the complex interaction between Islamic law, customary law, and national law. Several studies highlight that this legal plurality influences the understanding and application of Islamic inheritance law in a pluralistic society, necessitating synchronization between religious norms and the state legal system to achieve substantive justice.<sup>12</sup> Studies Sovia Santika and Yusnita Eva (2023) emphasize that the diversity of customary kinship systems is a major factor in the formation of variations in inheritance law across regions.<sup>13</sup> Meanwhile, field research Ramadhan Ariga et al., (2025) indicates that inheritance practices in indigenous communities such as the Gayo community still demonstrate the dominance of customary values despite the formal recognition of Islamic law.<sup>14</sup> On the other hand, Vidyadhara Prawiratama Nugraha et al., (2023) do a case study in Mukomuko City demonstrates the adaptation of *faraidh* principles to local customs to maintain social harmony,<sup>15</sup> and research Uswatun Hasanah et al., (2018) in Madura shows that inheritance dispute resolution often prioritizes customary-based deliberation over

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<sup>10</sup> Anne Mette Moller, "Deliberation and Deliberative Organizational Routines in Frontline Decision-Making," *Journal of Public Administration Research and Theory* 31, no. 3 (2021): 471–88, <https://doi.org/10.1093/jopart/muaa060>.

<sup>11</sup> Yuniar Rahmatiar et al., "Hukum Adat Suku Bugis," *Jurnal Dialektika Hukum* 3, no. 1 (2021): 89–112, <https://doi.org/10.36859/jdh.v3i1.536>.

<sup>12</sup> Ernik Ernik, Andi Sukmawati Assaad, and Helmi Kamal, "Hukum Waris Islam Dan Pluralisme Hukum," *Maddika: Journal Of Islamic Family Law* 4, no. 1 (2023): 38–47, <https://doi.org/10.24256/maddika.v4i1.4861>.

<sup>13</sup> Sovia Santika and Yusnita Eva, "Kewarisan Dalam Sistem Kekerabatan Matrilineal, Patrilineal Dan Bilateral," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* 11, no. 2 (2023): 193–202, <https://doi.org/10.30868/am.v11i02.4874>.

<sup>14</sup> Ramadhan Ariga, Dhiauddin Tanjung, and Ramadhan Syahmedi Siregar, "Division of Inherited Wealth in Customary Marriages in Gayo Lues Regency: An Analysis from the Perspective of the Compilation of Islamic Law," *Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE)* 8, no. 2 (2025): 2670–96, <https://doi.org/10.31538/ijse.v8i2.6528>.

<sup>15</sup> Vidyadhara Prawiratama Nugraha, Andry Harijanto, and Akhmad Muslih, "Studi Perbandingan Sistem Hukum Warisan Adat Masyarakat Dengan Sistem Hukum Warisan Islam Terhadap Pembagian Warisan Di Kota Mukomuko Kabupaten Mukomuko," *Keadilan Benkoelen: Jurnal Ilmu Hukum* 13, no. 1 (2023): 104–16, <https://doi.org/10.33369/jbengkoelenjust.v13i1.27804>.

formal court mechanism.<sup>16</sup> Furthermore Dina Triana Febriana et al., (2024), an epistemological analysis of the patrilineal and Islamic inheritance systems confirms that communities tend to negotiate the two legal systems pragmatically.<sup>17</sup> However, few studies have specifically explored how communities implement or even negotiate these two systems in very specific inheritance practices, such as giving a house to the youngest daughter. This study examines directly how the Palampang community constructs justice through social interpretations of inheritance law. This approach demonstrates the novelty of viewing legal practice as a negotiation of religious, customary, and family values, rather than simply the application of normative rules.

This study aims to analyze the comparative application of Islamic inheritance law and customary inheritance law in Palampang Village, highlighting inheritance distribution practices, particularly in the cases of 2:1 distribution and the granting of a house to a daughter. This study is significant because it offers a concrete picture of how society responds to legal plurality in everyday life, as well as how it constructs justice in the distribution of inheritance. By highlighting local practices as analytical material, this article also contributes to the discourse on the reformulation of inheritance law that is more contextual and relative, and rooted in the cultural values of Indonesian society.

## Research Methods

This study employed a descriptive qualitative approach, allowing for an in-depth examination of inheritance practices in the Palampang Village community from the perspective of Islamic inheritance law and customary law. This method was chosen because it captured the hidden social meanings behind inheritance decisions, including the influence of local culture, perceptions of justice, and the dynamics of family deliberations.<sup>18</sup> The study was conducted in Palampang Village, Rilau Ale District, Bulukumba Regency—an area with Bugis-Makassar people that still upheld customary values, despite the majority being Muslim. The subjects were purposively selected from eight key informants, including traditional leaders, religious leaders, and heirs who had been directly involved in the distribution of family assets. The data was collected through in-depth interviews using semi-structured

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<sup>16</sup> Uswatun Hasanah, Afdolul Anam, and Mohammad Amir Hamzah, “Kekuatan Mengikat Mediasi Penyelesaian Sengketa Waris Masyarakat Madura,” *Arena Hukum* 13, no. 2 (2020): 300–313, <https://doi.org/10.21776/ub.arenahukum.2020.01302.6>.

<sup>17</sup> Dina Triana Febriana, Hazar Kusmayanti, and Bambang Daru Nugroho, “Epistemologi Sistem Pewarisan Patrilineal Dalam Hukum Waris Adat Dengan Sistem Pewarisan Hukum Islam Di Indonesia,” *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 5, no. 1 (2024): 95–114, <https://doi.org/10.15575/as.v5i1.30827>.

<sup>18</sup> Imam Gunawan, *Metode Penelitian Kualitatif Teori Dan Praktik* (Jakarta: Bumi Aksara, 2022).

guidelines, supplemented by participant observation during deliberations and community social activities related to inheritance distribution. To complement this, the researchers also utilized local customary law documents, family inheritance records, and Islamic legal literature as secondary data sources.

Data analysis was conducted using a thematic analysis approach, as described by Braun and Clarke, namely by identifying, organizing, and interpreting themes that emerged from interview transcripts and observation notes. Key themes such as the 2:1 division, family deliberation, the dominance of customary law, and the granting of a house to the youngest daughter became the focus of the analytical reading. Researchers used a legal pluralism framework to understand why two different legal systems can coexist, and even complement or conflict in practice.<sup>19</sup> Data validity was guaranteed through source triangulation techniques, namely matching data from various methods and sources, and through member checking techniques to ensure the accuracy of the researcher's interpretation. Ethical aspects were maintained through participatory consent from informants, guarantees of identity confidentiality, and the application of the principle of cultural empathy during the data collection process. This approach makes the study not only oriented towards normative legal aspects, but also on the social meanings surrounding inheritance practices as part of the construction of justice in Muslim indigenous communities.

## Results and Discussion

### 1. The practice of 2:1 inheritance distribution in Palampang Village

In general, Islamic inheritance law (*faraidh*) is part of Islamic law that regulates in detail how a Muslim's inheritance after death is distributed to the legitimate heirs.<sup>20</sup> These provisions are based on verses of the al-Quran, the hadith of the Prophet Muhammad saw., and the consensus of scholars. One of the main verses is Surah An-Nisa': 11, which states: "Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two 'or more' females, their share is two-thirds of the estate...." (Surah An-Nisa': 11).

These provisions are followed by details of inheritance shares for fathers, mothers, spouses, and siblings, which are explained in subsequent verses and detailed in *fiqh*

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<sup>19</sup> Ernik, Assaad, and Kamal, "Hukum Waris Islam Dan Pluralisme Hukum."

<sup>20</sup> Andi Asdar Yusuf, "Controversy of Islamic Law on the Distribution of Inheritance to the Heirs of Different Religion," *HUNAFI Jurnal Studia Islamika* 14, no. 2 (2017): 377–403, <https://doi.org/10.24239/jsi.v14i2.490>.

literature.<sup>21</sup> The main objective of Islamic inheritance law is to uphold the fair distribution of assets based on biological and legal rights, and to prevent conflict after the death of the testator.<sup>22</sup> In its application, Islamic inheritance law is closely related to principles, one of which is the *Ijbari* principle. The *Ijbari* principle is a principle of Islamic inheritance law that automatically transfers assets from a deceased person (the testator) to his heirs in accordance with the provisions of Allah swt. without waiting for the opinion or agreement of either the testator or the heirs.<sup>23</sup> Therefore, with these principles, Islamic inheritance law is said to be more rigid and absolute.

On the other hand, customary inheritance law is a system of inheritance that grows and develops based on the customs of a particular community, which are passed down from generation to generation.<sup>24</sup> In the Bugis context, customary inheritance law is not always written down but is internalized and implemented through social norms such as family deliberations, consideration of contributions, and local moral values. According to Van Vollenhoven, customary law is flexible and lives within society ("living law"), enabling it to adapt to social change.<sup>25</sup>

The principles of Bugis customary inheritance law often do not clearly differentiate between male and female children in terms of the number of shares. In fact, in many cases, aspects of service such as caring for parents in old age are the main consideration in determining who gets more, including the practice of giving a house to the youngest daughter, who is considered the most rewarding emotionally and domestically.<sup>26</sup>

In practice in Palampang Village, these two systems, Islam and custom, do not negate each other but rather coexist dynamically. Communities will choose and adapt the system they feel best creates justice and harmony within the family. In this case, Islamic inheritance

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<sup>21</sup> Syed Hasnat Ahmad Shah Gillani, Noor-Ul- Ain Shabbir, and Asmara Farzand, "Laws Regarding Family Inclusive of Marriage, Dowry, Custody, Divorce, Maintenance and Inheritance," *AL-IDRAK JOURNAL* 4, no. 1 (2024): 91–106, <https://www.alidrak.com/ojs3303/index.php/alidrak/article/view/141>.

<sup>22</sup> Muhammad Husni, "Mencegah Potensi Konflik Dalam Pelaksanaan Wasiat Pembagian Harta, Mungkinkah?," *De Jure: Jurnal Hukum Dan Syar'iah* 11, no. 2 (2019): 90–99, <https://doi.org/10.18860/j-fsh.v11i2.6728>.

<sup>23</sup> Prayogi Prayogi et al., "Analisis Yuridis Penerapan Asas Ijbari Dalam Pelaksanaan Pembagian Harta Warisan Perspektif Kompilasi Hukum Islam (Studi Kasus Di Kecamatan Silau Laut, Kabupaten Asahan)," *Jurnal Intelek Insan Cendikia* 1, no. 9 (2024): 4615–31, <https://jicnusanantara.com/index.php/jiic/article/view/1328>.

<sup>24</sup> Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018): 315–30, <https://doi.org/10.22304/pjih.v5n2.a6>.

<sup>25</sup> Rubi Rubi et al., "Dinamika Hukum Dalam Pengaturan Masyarakat Hukum Adat Ditinjau Dari Sistem Hukum Nasional," *Iuris Studia: Jurnal Kajian Hukum* 5, no. 3 (2024): 861–69, <https://doi.org/10.55357/is.v5i3.768>.

<sup>26</sup> Izdihar Luthfiyyah Surya Gerhana and Elip Intan Pratiwi, "Pembagian Waris Suku Bugis Ditinjau Dari Hukum Adat Dan Hukum Islam," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 1 (2023): 294–301, <https://doi.org/10.59059/mandub.v2i1.912>.

law serves as a normative reference, while customary law adapts to the social and emotional realities of the family.

a. Implementation of Islamic Inheritance Law

Amidst the diversity of cultural values and belief systems in Indonesia, the people of Palampang Village exhibit unique social dynamics in their response to the application of Islamic inheritance law. Formally, almost all residents of this village are Muslim and recognize the principles of Islamic law as a guide for their lives. However, in daily practice, particularly regarding inheritance distribution, the application of Islamic inheritance law still faces quite complex challenges.

One of the main factors influencing the implementation of Islamic inheritance law is the unequal level of public understanding. Most citizens are familiar with the term "a man's share is twice that of a woman" as a religious provision that must be respected. However, this understanding is often superficial, lacking knowledge of the context, requirements, and detailed divisions in the *fiqh* of the *Mawarits*. As expressed by Rifa Zalsabila, a respondent who felt less familiar with Islamic law, she stated:

*"I honestly don't know much about the divisions of inheritance according to Islamic law, because usually in families it is the parents who give, and we as heirs only accept what the testator decides."*<sup>27</sup>

The researcher also asked the second respondent, Sunarti (26 years old), the same question, who also expressed her ignorance regarding the inheritance distribution system according to Islamic law.

*"I don't know about the parts of the heirs according to Islamic law, what I know is, the one who cares for the parents gets the inheritance in the form of the parents' house, or the last one to leave the house."*<sup>28</sup>

Based on the interview results, it was revealed that the public's understanding of Islamic inheritance law and its components is still uneven, resulting in significant uncertainty regarding the application of Islamic inheritance law. While the public generally respects Islamic law in its normative form, this limited knowledge makes it difficult to understand, let alone apply, to everyday life.

Decisions regarding inheritance distribution in the Palampang community are heavily influenced by local social structures and kinship systems, particularly the relationships between family members and the roles and contributions of each child.<sup>29</sup> In many cases,

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<sup>27</sup> Rifa Zalsabila (27 years old), Heir, *Interview*, March 9, 2025.

<sup>28</sup> Sunarti (27 years old), Heir, *Interview*, March 9, 2025.

<sup>29</sup> Subekti and Ucu, "Pewarisan Berdasarkan Hukum Waris Adat Terkait Sistem Kekerabatan Di Indonesia."

Islamic law is not the primary reference, as society places greater emphasis on a sense of justice derived from social experience. Respondent Mr. Syuaib expressed his concerns about, *"who cares for the parents, who provides the most financial support, and who remains in the family home after their parents die."*<sup>30</sup>

In some cases, lack of understanding or even disinterest in Islamic inheritance law is not due to a rejection of the religion, but rather to a perception that Islamic law is too rigid and does not allow for compromise (the principle of *ijbari*) regarding unique family circumstances. Meanwhile, in customary systems, there is ample room for discussion and flexibility, making it preferred as a practical, peaceful solution that does not lead to conflict. As expressed by Mrs. Andi Sitti Naheria (81 years old):

*"In ancient times, the Bugis people were aware of the expression oroane mallempa, makkunraie majjujung, meaning that men get two portions and women get one, because it is based on responsibility, but what is generally applied in society is that it depends on the results of family deliberations to avoid conflict."*<sup>31</sup>

However, some residents feel doubtful or divided, wanting to practice Islamic teachings faithfully while also being bound by the traditions and social expectations of their extended families. This dilemma demonstrates that the Palampang community is at a crossroads between loyalty to religious values and adherence to local traditions—two value systems they both respect but are not yet fully harmonious in practice.

#### b. Implementation of Customary Inheritance Law

Customs are rules that are not only known, recognized, and respected but also adhered to. Customs have strong ties and influence in society. The influence of these rules depends on the community maintaining and preserving these customs, especially those based on a sense of justice. Not all customs can be considered law; there is a distinction between the two (customs and customary law). Most customs are unwritten (codified) and are coercive in nature and carry sanctions (punishments). This gives rise to what are called legal consequences, hence the term Customary Law. As stated by C. Van Vollenhoven regarding the definition of customary law: *"Customary law is the whole of behavior that regulates human behavior in community life, which is customary and at the same time has or provides sanctions for anyone who violates it, and there are coercive efforts"*

From the definition above, it can be concluded that custom can be considered customary law if it meets several criteria: 1) the existence of rules governing behavior, 2) the presence of sanctions, and 3) the existence of coercive force.

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<sup>30</sup> Syuaib (51 years old), Community Leader, *Interview*, March 8, 2025.

<sup>31</sup> Andi Sitti Naheria (81 years old), Community Leader, *Interview*, March 9, 2025

In Palampang Village, customary law is not only a cultural heritage but also an integral part of the community's social structure. The inheritance system does not strictly adhere to written law or Islamic sharia, but rather develops from collective customs maintained through family agreements and local values. The practice of customary inheritance here stems from a strong social awareness of the function of inheritance as a bond of family harmony, not simply the distribution of wealth. In Bugis-Makassar people like Palampang, customs are passed down orally and are lived out in family deliberations. The head of the Palampang village government, the Village, also stated during an interview that:

*"People in Palampang predominantly use customary law or deliberations, whether regarding inheritance issues or conflicts within the community."*<sup>32</sup>

The significant differences between Islamic inheritance law and customary inheritance law lie in the methods and processes, as well as the distribution of inheritance to the heirs. In customary law, inheritance distribution is not mathematically defined, but rather through deliberation within the family. Therefore, the 2:1 ratio between men and women in Sharia law may not be applicable or may not be consistent with the results of family deliberations.

The basis for customary inheritance distribution in the Palampang Village, in addition to lineage (*nasab*), also considers the social contributions of the prospective heirs. This includes those who cared for their parents during their lifetime until their death. Therefore, inheritance distribution based on contributions is often implemented, as each heir's role and responsibility differ, and therefore, the amount received may vary.

A social custom, which has since become customary, is to give a house to the youngest daughter, recognizing her contributions. As one respondent put it:

*"In the inheritance distribution process, the youngest daughter is usually given priority in receiving the house left by her parents, due to her contribution in caring for and nurturing her parents until the end of their lives."*<sup>33</sup>

In line with the opinion of Mrs. Andi Sitti Naheria who stated regarding the portion for the youngest daughter, Mr. Syuaib also stated that:

*"The portion for each heir is not actually determined explicitly, but depends on the agreement of both parents, who usually provide a house for the youngest daughter, because the youngest daughter is usually the last to leave the house."*<sup>34</sup>

This phenomenon reflects the existence of legal pluralism in society, where customary law and Islamic law interact and adapt to the local social context. This is in line with previous research findings, which show that Bugis society tends to accommodate both legal systems to maintain family and community harmony.

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<sup>32</sup> A. Marsuki, Head of Palampang Village, *Interview*, March 9, 2025.

<sup>33</sup> Andi Sitti Naheria (81 years old), Community Leader, *Interview*, March 9, 2025

<sup>34</sup> Syuaib (51 years old), Community Leader, *Interview*, March 8, 2025.

## 2. Dynamics of Legal Pluralism in the Distribution of Inheritance

Pluralism emerges as a form of rejection of centralization and positivism in the application of law to the people. This will provide an understanding of the various legal systems that have developed within society. Legal pluralism explains and maps various legal systems, their relationships, adaptations, and competition between them, and demonstrates society's choice to utilize certain laws that are appropriate to current conditions.<sup>35</sup>

The dynamics of legal pluralism in inheritance distribution in Palampang Village reflect the social reality that legal systems do not exist in a single system. In this context, the community has practically adopted two legal systems simultaneously: Islamic inheritance law and Bugis customary inheritance law. These two systems not only coexist but also influence and adapt to each other based on the family's circumstances and needs.

Legal pluralism in Palampang is not merely a reflection of differing norms but also a response to the complexity of social relations within families. Islamic law, with its normative provision regarding the 2:1 division of property, provides a clear and standard framework for determining who is entitled to which portion. However, this norm is not always strictly enforced in community practice. Instead, customary law, which emphasizes deliberation, family contributions, and emotional balance, serves as the primary framework for many inheritance cases in this region.<sup>36</sup> Interviews with several community leaders reinforce this reality. Respondent Syuaib, the local neighborhood unit head, stated:

*"Islamic inheritance law provides certainty, but sometimes lacks flexibility. I believe that distribution should take into account the contributions of each family member."*<sup>37</sup>

This statement demonstrates a normative awareness of sharia law, but is accompanied by pragmatic adjustments in its implementation. This is due to various factors, one of which is a lack of understanding regarding inheritance distribution methods under Islamic law.

In inheritance practices in Palampang Village, legal pluralism exists as an adaptive mechanism that allows two legal systems—Islamic and customary—to interact and adapt to the social realities of society. Islamic law, with its definitive distribution principles, such as the 2:1 ratio for boys and girls (al-Quran, An-Nisa: 11), is indeed recognized normatively by the majority of the community. However, in practice, these principles are often reinterpreted

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<sup>35</sup> Judiasih and Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia."

<sup>36</sup> Utama Wardi et al., "Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (2024): 13–25, <https://doi.org/10.57255/hakamain.v3i1.330>.

<sup>37</sup> Syuaib (51 years old), Community Leader, *Interview*, March 8, 2025.

through the lens of family deliberation, social values, and considerations of contributions to parents.

Field research found that communities do not reject Islamic law but prefer approaches contextually adapted to local family structures and culture. This is similar to research on the inheritance system in Palakka District, Bone Regency, which also adheres to a system of inheritance distribution based on deliberation. *"Usually, girls are given gold, houses, and furniture while still paying attention to the economic value of these items"*.<sup>38</sup> This quote reinforces findings in Palampang, where customary law allows greater scope for moral, emotional, and social considerations in determining inheritance distribution. For example, in Bugis society, the gift of a house to the youngest daughter is not found within Islamic legal structures, but is socially accepted because it embodies the value of appreciation for devotion. Family deliberations are the primary forum for agreeing on inheritance distribution, which may not always be in accordance with Sharia principles but is considered fair by all parties.

This dynamic legal pluralism allows for the development of hybrid solutions between Islamic norms and local culture. As Nur Nilam (2020) findings demonstrate, pluralism is not simply about the existence of two legal systems, but how society actively chooses, adapts, and even redesigns justice based on context.<sup>39</sup> In inheritance practices in Palampang, pluralism also serves as an instrument to mitigate potential conflict between heirs, provided it is managed with the principles of deliberation and a sense of cultural justice.

These findings further confirm that legal pluralism in inheritance is not simply a social reality but also a normative solution in a pluralistic society that remains heavily influenced by customs and family values. Furthermore, the practice of giving a house to the youngest daughter is a clear example of the dominance of customary values in inheritance practices. This practice not only highlights differing perspectives on justice but also demonstrates how the structure of family relationships is a crucial factor not taken into account in the formal legal system.

A study by Izdiyar Luthfiyyah Surya Gerhana (2022) also confirmed that in Bugis people, moral and social considerations are more often used as a reference in inheritance distribution than formal law. He called this "contextual justice," which exists in social practice

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<sup>38</sup> Asni Zubair, Muljan Muljan, and Rosita Rosita, "Integrasi Hukum Islam Dan Hukum Adat Dalam Pewarisan Masyarakat Bugis Bone," *Ar-Risalah: Jurnal Ilmu Syariah Dan Hukum* 2, no. 1 (2016): 1–19.

<sup>39</sup> Nur Nilam and Sohrah Sohrah, "Sistem Pembagian Harta Warisan Bagi Anak Laki-Laki Dan Anak Perempuan Di Kel. Pattapang, Kec. Tinggimoncong, Kab. Gowa (Studi Perbandingan Antara Kewarisan Adat Dan Hukum Kewarisan Islam)," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 1, no. 3 (2020): 508–24, <https://doi.org/10.24252/shautuna.v1i3.15454>.

and is recognized by all parties, although it does not always align with the principles of inheritance law.<sup>40</sup> However, this dynamic of pluralism is not without challenges. When there is no consensus within the family, potential conflicts between the application of customary law and Islamic law can arise. This is where the role of traditional and religious leaders is crucial in bridging the two potentially conflicting legal systems. Therefore, the success of legal pluralism in the Palampang context depends heavily on ongoing deliberation and local wisdom.<sup>41</sup>

Furthermore, from an Islamic legal perspective, customary law itself recognizes the existence of customary law, and it can be used as a source of *al-urf* law using the *ijtihad* method, if the custom is in accordance with Islamic legal principles. Therefore, any overlap between one law and another can be resolved through deliberation. In general, this dynamic demonstrates that in social practice, communities do not always adhere to a single legal system. Instead, they select and synthesize laws based on values they believe best reflect a sense of justice and social harmony. This is what makes legal pluralism in Palampang not merely coexistence, but also a form of negotiation and adaptation of values between religion and local culture.

### 3. Implications and Challenges of Pluralism in Inheritance Law

Legal pluralism in the inheritance system in Indonesia, particularly in Palampang Village, presents both opportunities and challenges that cannot be ignored. On the one hand, pluralism provides space for communities to adapt inheritance practices to the cultural, social, and religious values prevalent in their communities.<sup>42</sup> On the other hand, the overlap between Islamic, customary, and civil legal systems often creates legal uncertainty and even triggers conflict between heirs.

The existence of customary inheritance laws contributes significantly to creating a more personal and contextual sense of justice. People in Palampang tend to assess justice not only from a formal legal perspective, but also from the devotion, responsibility, and social relationships between heirs and testators. For example, in Bugis tradition, giving a house to the youngest daughter is not simply a right, but a symbol of appreciation for caring for parents.<sup>43</sup>

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<sup>40</sup> Gerhana and Pratiwi, "Pembagian Waris Suku Bugis Ditinjau Dari Hukum Adat Dan Hukum Islam."

<sup>41</sup> Sinaga, Nurhayati, and Affendi Mohmad Razali, "Legal Pluralism in the Context of the Distribution of Women's Inheritance."

<sup>42</sup> Sendi Sanjaya, "Dualisme Sistem Hukum Waris: Tantangan Implementasi Hukum Waris Islam Dalam Konteks Perdata Nasional Di Indonesia Dan Malaysia," *CBJIS: Cross-Border Journal of Islamic Studies* 6, no. 2 (2024): 395–408, <https://doi.org/10.37567/cbjis.v6i2.3799>.

<sup>43</sup> Abdul Aziz, "Dinamika Pemberian Harta Waris Lebih Kepada Anak Bungsu Di Jakarta Timur," *An Nawawi* 4, no. 1 (2024): 29–40, <https://doi.org/10.55252/annawawi.v4i1.42>.

This kind of practice is not found in the Islamic legal system, which has a rigid distribution system, but instead becomes a solution in agrarian-patrilineal societies like the Bugis, which prioritize family harmony and social stability. Therefore, legal pluralism can strengthen the legitimacy of inheritance distribution because it is based on collective agreement and deep-rooted cultural values.<sup>44</sup> However, legal pluralism also presents serious challenges, especially in the context of legal certainty. When there is no family agreement, the inconsistency between customary principles and Islamic law can lead to disputes between heirs. Furthermore, the absence of written rules in customary law causes inheritance distribution to rely heavily on subjective consensus, which can lead to hidden injustices, especially against groups with less bargaining power within the family, such as women who do not live with their parents.

Some communities even experience confusion over which law applies, primarily due to a lack of legal literacy. This is exacerbated by the weak role of mediators, both religious leaders and local government officials, in assisting communities in resolving inheritance disputes. Therefore, an integrative legal approach is needed that accommodates the basic principles of Islamic law with local wisdom. The Indonesian Compilation of Islamic Law, as a form of national codification, could provide a gateway for dialogue between Islamic and customary law. However, this approach needs to be complemented by strengthening community legal literacy and support from customary and religious leaders so that pluralism does not become a burden, but rather a just legal enrichment.

## Conclusion

This study shows that inheritance distribution practices in Palampang Village, Bulukumba Regency, represent a concrete manifestation of the legal pluralism that thrives within Bugis people. The two legal systems—Islamic and customary—are not practiced dichotomously, but rather selectively and in complementary ways. Islamic law serves as a normative foundation and a symbol of religious legitimacy that provides moral direction, while customary law serves as a social instrument that adapts principles of justice to the dynamics of kinship relations, economic conditions, and cultural values prevalent within the community. In practice, the principle of a 2:1 division of inheritance between sons and daughters is often not rigidly applied, as the community prioritizes the principles of balance and harmony through extended family deliberation (*musyawarah rumpu*) based on empathy

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<sup>44</sup> Muhammad Hasyim and Teng Muhammad Bahar Akkase, "The Philosophy of Kajaolaliddong: A Basic Pattern of Life and Culture in Bugis and Makassar," *Systematic Reviews in Pharmacy* 11, no. 12 (2020): 1548–52, <https://philpapers.org/rec/HASTPO-16>.

(pesse) and social responsibility. Phenomena such as the granting of a house to the youngest daughter reflect a social interpretation of justice that transcends the textual boundaries of formal law. This practice demonstrates that society places justice within the context of social relations and family devotion, rather than solely in the legalistic distribution of material goods. Thus, legal pluralism in Palampang reflects not only the coexistence of two legal systems but also the ongoing negotiation of values, perceptions of justice, and social dynamics within families.

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